

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
NEWARK DIVISION**

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<b>UNITED STATES OF AMERICA,</b>		)
<b>STATE OF NEW JERSEY,</b>		)
		)
Plaintiffs,		)
		)
v.		)
		)
		)
<b>PSEG FOSSIL LLC,</b>		)
		)
Defendant.		)
<hr/>		)

Civ. No. 02-CV-340

**AMENDMENT TO CONSENT DECREE**

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WHEREAS, Plaintiffs, the United States of America (“the United States”), on behalf of the United States Environmental Protection Agency (“EPA”), and the State of New Jersey (“New Jersey”) acting by and through the New Jersey Department of Environmental Protection (“NJDEP”), and Defendant, PSEG Fossil LLC (“PSEG Fossil”), lodged a consent decree on February 15, 2002, (“Consent Decree”) resolving Plaintiffs’ claims for injunctive relief and civil penalties arising out of alleged violations of the Prevention of Significant Deterioration (“PSD”) and Nonattainment New Source Review (“Nonattainment NSR”) requirements in Parts C and D of Title I the Clean Air Act (“Act”), 42 U.S.C. §§ 7470–7515, and the federally-enforceable State Implementation Plan developed by the State of New Jersey (“SIP”);

WHEREAS, upon motion of the United States and New Jersey, this Court entered the Consent Decree on July 26, 2002;

WHEREAS, PSEG Fossil has requested a revised timeline in which to either Shut Down Hudson Unit 2 or install the pollution control technologies specified in the Consent Decree;

WHEREAS, in exchange for agreeing to a revised timeline, the Plaintiffs required that PSEG Fossil implement, through an amendment to the Consent Decree (“Amendment”), an alternative compliance program that achieves emission reductions through installation of pollution control technologies and operational changes, as well as allowance surrenders of SO<sub>2</sub> and NO<sub>x</sub>, and other actions to compensate for any delay in complying with the Consent Decree;

NOW, THEREFORE, without any admission of fact or law, it is hereby ORDERED, ADJUDGED, and DECREED that PSEG Fossil shall comply with the original Consent Decree as modified by this Amendment.

## **I. APPLICABILITY**

1. The provisions of the Consent Decree, as modified by this Amendment, shall continue to apply to and be binding upon the United States, New Jersey, and upon PSEG Fossil, its successors and assigns, and PSEG Fossil's officers, employees, and agents solely in their capacities as such.

2. All references to the phrase "Consent Decree" in the original Consent Decree shall be construed to mean "Consent Decree and the Amendment." All definitions in the Consent Decree, as well as those set forth below in Section II (Definitions) shall be applicable to this Amendment.

## **II. DEFINITIONS**

3. The following definitions shall apply to this Amendment:

a. "90-Day Rolling Average Emission Rate" shall be determined by calculating the Emission Rate for an Operating Day, and then arithmetically averaging that Emission Rate with the Emission Rates for the previous eighty-nine Operating Days. A new 90-Day Rolling Average shall be calculated for each new Operating Day.

b. "Kearny Unit 7 and Unit 8" shall mean the oil-fired steam electric generating units situated at PSEG Fossil's Kearny Generating Station, which is located at 118 Hackensack Avenue in Kearny, New Jersey.

c. "NO<sub>x</sub> Allowance" means an authorization or credit to emit a specified amount of NO<sub>x</sub> during the Ozone Control Period that is allocated or issued under an emission trading or marketable permit program of any kind established under the Act or the SIP.

d. "PJM" shall mean the Pennsylvania-New Jersey-Maryland independent system operator.

e. “Shakedown Period” shall mean a period of 180 days commencing the Operating Day after Hudson Unit 2 is combusting 100% Ultra-Low Sulfur Coal.

f. “Shut Down” shall mean the permanent cessation of operation of a Unit and the dismantling of this Unit such that it can no longer be brought back into commercial operation without going through a new PSD/Nonattainment NSR permitting process, as a new source, with NJDEP and/or EPA.

g. “SNCR” shall mean a selective non-catalytic reduction system for the reduction of emissions of NO<sub>x</sub>.

g. “Ultra-Low Sulfur Coal” shall mean sub-bituminous coal obtained by PSEG Fossil with a sulfur content of no greater than 0.25%, a nitrogen content of no greater than 1% and an ash content no greater than 2.5%, all as determined on a quarterly basis from fuel analysis data for each barge of coal delivered to the station during that quarter.

### **III. EMISSIONS REDUCTIONS AND CONTROLS**

#### **A. SO<sub>2</sub> Controls at Hudson Unit 2**

4. Consent Decree Paragraph 53 is replaced with the following: “By no later than December 31, 2010, PSEG Fossil shall install and commence operation of an FGD at Hudson Unit 2 in accordance with the design parameters approved by EPA and NJDEP unless it has completed Shut Down pursuant to Paragraphs 18–19 of this Amendment. The installation of the FGD shall be completed in accordance with the following FGD milestones:

Award major equipment orders:	June 4, 2007
Delivery of OEM design package:	January 7, 2008
Commencement of construction:	April 7, 2008
Commencement of tie-in outage:	September 15, 2010

Commencement of FGD operation: 14 days after Unit is synchronized with any utility electric distribution system following the tie-in outage.

Beginning on December 31, 2010, PSEG Fossil shall operate the FGD at Hudson Unit 2 to achieve and maintain SO<sub>2</sub> Emission Rates of no greater than 0.150 lb/MMBtu, based on a 30-Day Rolling Average Emission Rate, and 0.250 lb/MMBtu, based on a 24-Hour Emission Rate.”

**B. SO<sub>2</sub> Controls at Mercer Units 1 and 2**

5. Consent Decree Paragraphs 54 and 55 are replaced with the following: “By no later than December 31, 2008, PSEG Fossil shall submit to EPA and NJDEP for approval proposed design parameters for an FGD at Mercer Unit 1. NJDEP and EPA shall approve, disapprove, or modify PSEG Fossil’s initial design proposal in accordance with Paragraphs 94 through 98 of the Consent Decree. The installation of the FGD shall be completed in accordance with the following FGD milestones:

Award major equipment orders:	February 5, 2007
Delivery of OEM design package:	June 9, 2008
Commencement of construction:	July 6, 2009
Commencement of tie-in outage:	September 15, 2010
Commencement of FGD operation:	14 days after Unit is synchronized with any utility electric distribution system following the tie-in outage.

Beginning on December 31, 2010, PSEG Fossil shall operate the FGD at Mercer Unit 1 to achieve a 30-Day Rolling Average Emission Rate for SO<sub>2</sub> of no greater than 0.150 lbs/MMBtu,

based on a 30-Day Rolling Average Emission Rate, and 0.250 lb/MMBtu, based on a 24-Hour Emission Rate.”

6. Consent Decree Paragraphs 56 and 57 are replaced with the following: “By no later than December 31, 2008, PSEG Fossil shall submit to EPA and NJDEP for approval proposed design parameters for an FGD at Mercer Unit 2. NJDEP and EPA shall approve, disapprove, or modify PSEG Fossil’s initial design proposal in accordance with Paragraphs 94 through 98 of the Consent Decree. The installation of the FGD shall be completed in accordance with the following FGD milestones:

Award major equipment orders:	February 5, 2007
Delivery of OEM design package:	June 9, 2008
Commencement of construction:	July 6, 2009
Commencement of tie-in outage:	September 15, 2010
Commencement of FGD operation:	14 days after Unit is synchronized with any utility electric distribution system following the tie-in outage.

Beginning on December 31, 2010, PSEG Fossil shall operate the FGD at Mercer Unit 2 to achieve a 30-Day Rolling Average Emission Rate for SO<sub>2</sub> of no greater than 0.150 lbs/MMBtu, based on a 30-Day Rolling Average Emission Rate, and 0.250 lb/MMBtu, based on a 24-Hour Emission Rate.”

**C. NO<sub>x</sub> Controls at Hudson Unit 2**

7. Consent Decree Paragraph 68 is replaced with the following: “By January 1, 2007 PSEG Fossil shall commence year-round operation of an SNCR on Hudson Unit 2 until it either installs and operates a SCR at Hudson Unit 2, or Shuts Down Hudson Unit 2 in accordance

with Paragraph 18 of this Amendment. By no later than December 31, 2010, PSEG Fossil shall install and commence year-round operation of an SCR at Hudson Unit 2 to achieve and maintain NO<sub>x</sub> Emission Rates of no greater than 0.100 lb/MMBtu, based on a 30-Day Rolling Average Emission Rate, and 0.150 lb/MMBtu, based on a 24-Hour Emission Rate unless it has completed Shut Down pursuant to Paragraphs 18–19 of this Amendment. The installation of the SCR shall be completed in accordance with the following SCR milestones:

Award major equipment orders:	June 4, 2007
Delivery of OEM design package:	January 7, 2008
Commencement of construction:	April 7, 2008
Commencement of tie-in outage:	September 15, 2010
Commencement of SCR operation:	14 days after Unit is synchronized with any utility electric distribution system following the tie-in outage.

**D. NO<sub>x</sub> Controls at Mercer Units 1 and 2**

8. A new Paragraph 71a is inserted in the Consent Decree as follows: “By no later than January 1, 2007, PSEG Fossil shall achieve and maintain NO<sub>x</sub> Emission Rates at Mercer Unit 2 of no greater than 0.100 lb/MMBtu, based on a 90-Day Rolling Average Emission Rate. PSEG Fossil shall continue year-round operation of the Mercer Unit 2 SCR, and shall operate the SCR at all times Mercer Unit 2 operates, subject to the exceptions set forth in Paragraph 63 of the Consent Decree.”

9. A new Paragraph 72a is inserted in the Consent Decree as follows: “By no later than January 1, 2007, PSEG Fossil shall achieve and maintain NO<sub>x</sub> Emission Rates at Mercer Unit 1 of no greater than 0.100 lb/MMBtu, based on a 90-Day Rolling Average Emission Rate.



PSEG Fossil shall continue year-round operation of the Mercer Unit 1 SCR, and shall operate the SCR at all times Mercer Unit 1 operates, subject to the exceptions set forth in Paragraph 63 of the Consent Decree.”

**E. PM Controls at Hudson Unit 2**

10. Consent Decree Paragraph 80 is replaced with the following: “By no later than December 31, 2010, PSEG Fossil shall install and commence operation of a baghouse at Hudson Unit 2, in accordance with the design parameters approved by EPA and NJDEP, to achieve and maintain a PM Emission Rate of no more than 0.0150 lb/MMBtu unless it has completed Shut Down pursuant to Paragraphs 18–19 of this Amendment. The installation of the baghouse shall be completed in accordance with the following baghouse milestones:

Award major equipment orders:	June 4, 2007
Delivery of OEM design package:	January 7, 2008
Commencement of construction:	April 7, 2008
Commencement of tie-in outage:	September 15, 2010
Commencement of baghouse operation:	14 days after Unit is synchronized with any utility electric distribution system following the tie-in outage.

PSEG Fossil shall operate the Hudson Unit 2 baghouse at all times that the Unit it serves is combusting coal. PSEG Fossil shall operate the existing Hudson Unit 2 ESP and fly ash conditioning system beginning January 1, 2007, and continuing until the Unit is either permanently Shut Down or retrofitted with a baghouse to control PM emissions.”

**F. PM Controls at Mercer Units 1 and 2**

11. A new Consent Decree Paragraph 87a is inserted as follows: “By no later than December 31, 2007, PSEG Fossil shall submit to EPA and NJDEP for review and approval the design criteria for a new baghouse to control PM emissions at Mercer Unit 1. EPA and NJDEP shall approve, disapprove, or modify PSEG Fossil’s proposed design criteria in accordance with Paragraphs 94–98 of the Consent Decree. By no later than December 31, 2008, PSEG Fossil shall install and commence operation of the baghouse at Mercer Unit 1 in accordance with the approved design criteria. The installation of the baghouse shall be completed in accordance with the following baghouse milestones:

Award major equipment orders:	February 5, 2007
Delivery of OEM design package:	June 11, 2007
Commencement of construction:	September 10, 2007
Commencement of tie-in outage:	September 15, 2008
Commencement of baghouse operation:	14 days after Unit is synchronized with any utility electric distribution system following the tie-in outage.

PSEG Fossil shall operate the Mercer Unit 1 baghouse to achieve and maintain a PM Emission Rate of no more than 0.0150 lb/mmBtu, and shall operate the baghouse whenever the Unit it serves is combusting coal.”

12. A new Consent Decree Paragraph 87b is inserted as follows: “By no later than December 31, 2007, PSEG Fossil shall submit to EPA and NJDEP for review and approval the design criteria for a new baghouse to control PM emissions at Mercer Unit 2. EPA and NJDEP shall approve, disapprove, or modify PSEG Fossil’s proposed design criteria in accordance with

Paragraphs 94–98 of the Consent Decree. By no later than December 31, 2008, PSEG Fossil shall install and commence operation of the baghouse at Mercer Unit 2 in accordance with the approved design criteria. The installation of the baghouse shall be completed in accordance with the following baghouse milestones:

Award major equipment orders:	February 5, 2007
Delivery of OEM design package:	June 11, 2007
Commencement of construction:	September 10, 2007
Commencement of tie-in outage:	September 15, 2008
Commencement of baghouse operation:	14 days after Unit is synchronized with any utility electric distribution system following the tie-in outage.

PSEG Fossil shall operate the Mercer Unit 2 baghouse to achieve and maintain a PM Emission Rate of no more than 0.0150 lb/mmBtu, and shall operate the baghouse whenever the Unit it serves is combusting coal.”

**G. Fuel Switch at Hudson Unit 2**

13. Consent Decree Paragraph 59 is replaced with the following: “Between January 1, 2007, and April 30, 2007, PSEG Fossil shall burn at Hudson Unit 2 a blend of Ultra-Low Sulfur Coal and other coal, as long as such other coal complies with PSEG Fossil’s permit and the SIP (“Compliance Coal”). During this time period, PSEG Fossil shall use best efforts to ensure that no less than 20% of the coal that it burns is comprised of Ultra-Low Sulfur Coal through implementation of the following work practices at Hudson Unit 2:

a. PSEG Fossil shall segregate coal delivered to Hudson Station such that three to five of the sixteen coal hoppers that collect coal from the coal pile are restricted to Ultra-Low

Sulfur Coal and shall use best efforts to operate the coal plow or plows that remove coal from the hoppers for combustion in Hudson Unit 2 such that no less than 20% of the coal that is sent to the furnace for combustion is Ultra-Low Sulfur Coal.

b. PSEG Fossil shall achieve this fuel blend by using best efforts to: (i) restrict the coal hoppers from which a single coal plow may collect coal such that no less than 20% of the coal that is sent to the furnace for combustion is Ultra-Low Sulfur Coal; or, (ii) operate two coal plows, one for the hoppers loaded with Ultra-Low Sulfur Coal and one for the hoppers loaded with Compliance Coal, but remove coal collection arms from the plows such that no less than 20% of the coal that is sent to the furnace for combustion is Ultra-Low Sulfur Coal.

PSEG Fossil shall track the method it employs to blend coal and report that method in its Quarterly Progress Reports pursuant to Section VII of this Amendment.

From May 1, 2007, until PSEG Fossil Shuts Down Hudson Unit 2 or operates an FGD at the Unit in accordance with this Amendment, PSEG Fossil shall burn only Ultra-Low Sulfur Coal at Hudson Unit 2. PSEG Fossil shall use best efforts to minimize emissions of SO<sub>2</sub>, NO<sub>x</sub>, and PM from Hudson Unit 2 during and after the Shakedown Period.”

14. A new Consent Decree Paragraph 59a is inserted as follows: “Commencing May 1, 2007, and continuing through the Shakedown Period, PSEG Fossil shall collect SO<sub>2</sub> and NO<sub>x</sub> emissions data for the purpose of proposing interim SO<sub>2</sub> and NO<sub>x</sub> rates for Hudson Unit 2.

Within 30 days after the expiration of the Shakedown Period, PSEG Fossil shall submit to EPA and NJDEP for their review and approval an SO<sub>2</sub> emissions report and a NO<sub>x</sub> emissions report.

Both the SO<sub>2</sub> and NO<sub>x</sub> emissions reports shall include:

a. SO<sub>2</sub> and NO<sub>x</sub> emissions data collected during the Shakedown Period;

b. an analysis of PSEG Fossil's ability to achieve and maintain 30-Day Rolling Average Emission Rates for SO<sub>2</sub> and NO<sub>x</sub> at Hudson Unit 2 in light of the data collected during the Shakedown Period; and

c. proposed 30-Day Rolling Average Emission Rates for SO<sub>2</sub> and NO<sub>x</sub> which may include and identify a proposed compliance margin for achieving the proposed rates on a continuous basis.

Beginning 30 days after approval by EPA and NJDEP, PSEG shall begin to comply with the 30-Day Rolling Average Emission Rates for SO<sub>2</sub> and NO<sub>x</sub> approved by EPA and NJDEP. PSEG shall continue to comply with such rates until superseded by emission rates in Paragraphs 4 and 7 of this Amendment following installation of an FGD and SCR at Hudson Unit 2."

15. A new Consent Decree Paragraph 59c is inserted as follows: "Prior to the installation of an FGD at Mercer Unit 1 and Mercer Unit 2, PSEG Fossil shall continue to burn coal at Mercer Unit 1 and Mercer Unit 2 in compliance with the respective NJDEP permit requirements for those Units, including sulfur content limitations, in effect as of the date of lodging of this Amendment."

16. A new Consent Decree Paragraph 59b is inserted as follows: "Upon the commencement of operation of an FGD at any Unit pursuant to this Amendment, PSEG Fossil shall burn only coal that has a monthly average sulfur content of no greater than 2.00% at that Unit. The monthly average sulfur content shall be determined in accordance with the New Jersey permits for these particular Units."

#### **H. Emission Caps at Hudson Unit 2**

17. A new Consent Decree Paragraph 98a is inserted as follows: "**Emissions Cap at Hudson Unit 2.** PSEG Fossil shall ensure that total emissions from Hudson Unit 2, including

the tons of pollutants emitted during all periods of operation (including during periods of startup, shutdown, and malfunction), do not exceed the following annual tonnage limitations:

<b>Year</b>	<b>SO<sub>2</sub> (tons per year)</b>	<b>NO<sub>x</sub> (tons per year)</b>
<b>2007</b>	5,547	3,486
<b>2008</b>	5,270	3,486
<b>2009</b>	5,270	3,486
<b>2010</b>	5,270	3,486

**I. Shut Down of Hudson Unit 2**

18. A new Consent Decree Paragraph 98b is inserted as follows: “In lieu of installing and operating the controls and achieving the emission rates at Hudson Unit 2 required by Consent Decree Paragraphs 53, 68, and 80, PSEG Fossil may elect to notify EPA, NJDEP, and PJM no later than December 31, 2007, of its intention to Shut Down permanently Hudson Unit 2 by December 31, 2008, and shall Shut Down Hudson Unit 2 by December 31, 2008.”

19. A new Consent Decree Paragraph 98c is inserted as follows: “If after having made the notice provided in Paragraph 98b, PSEG Fossil receives a determination from PJM that deactivation of Hudson Unit 2 would adversely affect the reliability of the transmission system (“Reliability Determination”) and obtains from the Federal Energy Regulatory Commission (“FERC”), as part of a cost-of-service Reliability Must Run filing, a Cost of Service Recovery Rate Tariff that includes a tracker for the monthly recovery of the costs for installation and operation of the FGD, SCR and baghouse required by this Amendment, then PSEG Fossil may continue to operate Hudson Unit 2 under the provisions of Paragraphs 13–15 of this Amendment until December 31, 2010, at which time PSEG Fossil shall commence operation of an FGD, SCR, and baghouse at Hudson Unit 2 in accordance with the emission rates and limitations set

forth herein. If after having made the notice provided in Paragraph 98b, PSEG Fossil receives the Reliability Determination from PJM but does not receive from the FERC the Cost of Service Recovery Rate Tariff with tracker for monthly recovery of the costs for the installation and operation of the FGD, SCR and baghouse required by this Amendment, then PSEG Fossil may continue to operate Hudson Unit 2 under the provisions of Paragraphs 13–15 of this Amendment until December 31, 2010 or the needs of the reliability determination are met, whichever occurs first. In no event shall PSEG Fossil operate Hudson Unit 2 after December 31, 2010—even in the event that the Department of Energy or the FERC issues an order directing PSEG Fossil to continue operation of Hudson Unit 2 to address reliability concerns—unless PSEG Fossil has installed and operates the FGD, SCR and baghouse pursuant to this Amendment. If PSEG Fossil operates Hudson Unit 2 after December 31, 2010, PSEG Fossil shall achieve and maintain the emission rates set forth herein applicable to that Unit. If after having made the notice provided in Paragraph 98b, PSEG Fossil does not receive a Reliability Determination from PJM, then PSEG Fossil shall shutdown Hudson Unit 2 by December 31, 2008. PSEG Fossil shall provide the Plaintiffs with copies of any documents sent to or received from PJM, the Department of Energy, or the FERC pursuant to this Paragraph within ten days of receipt or delivery by PSEG Fossil.”

**J. Shut Down of Kearny Units 7 and 8**

20. A new Consent Decree Paragraph 98d is inserted as follows: “No later than January 1, 2007, PSEG Fossil shall Shut Down Kearny Units 7 and 8 and surrender all applicable air pollution control permits for those Units.”

#### **IV. EFFECT OF AMENDMENT**

21. A new Paragraph 128a is inserted into the Consent Decree as follows: “As long as PSEG Fossil timely installs and operates the new emission control devices, timely operates the existing control devices, implements the emission reduction measures in Paragraphs 13, 16, and 20 of this Amendment, complies with the annual emission caps, and Shuts Down Hudson Unit 2 if it elects to do so, as required by this Amendment, then all civil claims of the United States and the State of New Jersey arising out of PSEG Fossil’s actual or prospective non-compliance with Paragraphs 53, 68, and 80 of the Consent Decree shall be resolved.”

#### **V. ALLOWANCES AND CREDITS**

22. Consent Decree Paragraph 99 is replaced with the following: “Beginning on January 1, 2007, and upon each subsequent date by which PSEG Fossil is required to commence operation of an SO<sub>2</sub> emission control device or implement an SO<sub>2</sub> emission reduction measure under either the Consent Decree or this Amendment, PSEG Fossil may use any SO<sub>2</sub> Allowances allocated by EPA to Hudson Unit 2, Mercer Unit 1, Mercer Unit 2, Kearny Unit 7, and Kearny Unit 8 only to satisfy the operational needs of these Units, collectively, and shall neither: (a) use such Allowances at any other Unit, including any other PSEG Fossil Unit not covered by this Decree; nor (b) sell or transfer any SO<sub>2</sub> Allowances allocated to these Units to a third party, other than for purposes of retiring such SO<sub>2</sub> Allowances in accordance with the Consent Decree and this Amendment.”

23. Consent Decree Paragraph 100 is replaced with the following: “Beginning January 1, 2008, and within one year of each subsequent date by which PSEG Fossil is required to commence operation of an SO<sub>2</sub> emission control device or implement an SO<sub>2</sub> emission reduction measure under either the Consent Decree or this Amendment, PSEG Fossil shall



surrender to EPA, or transfer to a non-profit third party selected by PSEG Fossil for surrender, any SO<sub>2</sub> Allowances that exceed the operational SO<sub>2</sub> Allowance needs of Hudson Unit 2, Mercer Unit 1, Mercer Unit 2, Kearny Unit 7, and Kearny Unit 8, collectively. PSEG shall surrender SO<sub>2</sub> Allowances by the use of the applicable United States Environmental Protection Agency Acid Rain Program Allowance Transfer Form.”

24. Consent Decree Paragraph 101 is replaced with the following: “Beginning May 1, 2004, and upon each subsequent date by which PSEG Fossil is required to commence operation of a NO<sub>x</sub> emission control device or implement a NO<sub>x</sub> emission reduction measure under either the Consent Decree or this Amendment, PSEG Fossil may use any NO<sub>x</sub> Allowances allocated by EPA to Hudson Unit 2, Mercer Unit 1, Mercer Unit 2, and, as of January 1, 2007, Kearny Unit 7, and Kearny Unit 8 only to satisfy the operational needs of these Units, collectively, and shall neither: (a) use such NO<sub>x</sub> Allowances at any other Unit, including any other PSEG Fossil Unit not covered by this Decree; nor (b) sell or transfer any NO<sub>x</sub> Allowances allocated to these Units to a third party, other than for purposes of retiring such NO<sub>x</sub> Allowances in accordance with the Consent Decree and this Amendment.”

25. Consent Decree Paragraph 102 is replaced with the following: “Beginning May 1, 2005, and within one year of each subsequent date by which PSEG Fossil is required to commence operation of a NO<sub>x</sub> emission control device or implement a NO<sub>x</sub> emission reduction measure under either the Consent Decree or this Amendment, PSEG Fossil shall retire to EPA, or transfer to a non-profit third party selected by PSEG Fossil for retirement, any NO<sub>x</sub> Allowances that exceed the operational NO<sub>x</sub> Allowance needs of Hudson Unit 2, Mercer Unit 1, Mercer Unit 2, and, as of January 1, 2007, Kearny Unit 7, and Kearny Unit 8, collectively.”

26. A new Consent Decree Paragraph 102a is inserted as follows: “Within ninety days of entry of this Amendment, PSEG Fossil shall surrender to EPA, or transfer to a non-profit third party selected by PSEG Fossil for surrender, 1,230 NO<sub>x</sub> Allowances and 8,568 SO<sub>2</sub> Allowances not already allocated to or generated by Hudson Unit 2, Mercer Unit 1, Mercer Unit 2, Kearny Unit 7, and Kearny Unit 8.”

27. A new Consent Decree Paragraph 102b is inserted as follows: “For any and all actions taken by PSEG Fossil to comply with this Consent Decree and Amendment, including the Shut Down of Hudson Unit 2, and the installation and optimization of FGDs, SCR<sub>s</sub>, and baghouses, and other emission reduction measures, any emission reductions generated shall not be considered as a creditable contemporaneous emission decrease for the purpose of obtaining a netting credit under the Clean Air Act’s Nonattainment NSR and PSD Programs.”

## **VI. PERMITS**

28. Consent Decree Paragraph 117 is replaced with the following: “Within sixty days of entry of this Amendment, PSEG Fossil shall submit an application to NJDEP to modify its existing Title V Permit(s), to include a schedule for all performance, operational, maintenance, and control technology requirements established by this Amendment, including but not limited to Emission Rates and fuel limitations. Within three months after commencement of operation of each pollution control device and implementation of the measures in Section III of this Amendment, PSEG Fossil shall submit an application to modify its Title V Permit(s) to reflect the requirements of the Consent Decree, including but not limited to the new Emission Rates, limits on fuel use, and operation, maintenance, and optimization requirements of this Amendment.”

## **VII. REPORTING AND RECORDKEEPING**

29. A new Consent Decree Paragraph 156a is inserted as follows: “In addition to any progress reports required under the Consent Decree, beginning at the end of the first calendar quarter following entry of this Amendment and continuing every calendar quarter thereafter for the duration of this Decree, PSEG Fossil shall submit within thirty days after the end of each quarter a Quarterly Report.”

30. A new Consent Decree Paragraph 157b is inserted as follows: “PSEG Fossil shall include in its Quarterly Report the following: (a) information describing PSEG Fossil’s progress in achieving each of the FGD milestones, SCR milestones, and Baghouse milestones contained in this Amendment; (b) any other information describing PSEG Fossil’s progress in achieving compliance with this Amendment; (c) information relating to emission allowances and credits that PSEG Fossil is required to surrender under the Amendment, including those referenced in Paragraphs 22–27 of this Amendment; and (d) any information indicating that the installation and commencement of operation date for a pollution control device may be delayed, including the nature and cause of the potential delay and any steps taken by PSEG Fossil to mitigate such delay.”

31. A new Consent Decree Paragraph 157c is inserted as follows: “In addition to any progress reports required under the Consent Decree, PSEG shall submit to Plaintiffs a 30-day Report providing written notice to the Plaintiffs no more than thirty days after each FGD milestone, SCR milestone, or Baghouse milestone, stating whether PSEG Fossil has met the milestone, and if not, the reasons for any delay, including the nature and cause of the delay, and any steps taken by PSEG Fossil to mitigate such delay.”

32. Consent Decree Paragraph 158 is replaced with the following: "Each PSEG Fossil progress report, Quarterly Report and 30-day Report shall be signed by PSEG Fossil's Vice President, Fossil Operations, or, in his or her absence, another company Vice President, or higher ranking official, and contain the following certification:

"I certify under penalty of law that I believe the information provided in this document is true, accurate, and complete. I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attached documents and, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fine or imprisonment or both, for submitting false, inaccurate or incomplete information."

#### **VIII. MERCURY EMISSIONS REDUCTION AND MONITORING**

33. Consent Decree Paragraph 141 is replaced with the following: "PSEG Fossil shall install carbon injection systems for control of mercury emissions at Mercer Unit 1 and Mercer Unit 2 by January 31, 2007, and shall operate each carbon injection system whenever the Unit it serves is combusting coal. PSEG Fossil shall install a carbon injection system for control of mercury emissions at Hudson Unit 2 by December 31, 2010, and shall operate the carbon injection system whenever the Unit it serves is combusting coal, unless it has Shut Down Hudson Unit 2 pursuant to Paragraphs 18–19 of this Amendment. PSEG Fossil shall operate the carbon injection systems on Mercer Unit 1, Mercer Unit 2, and Hudson Unit 2, together with the baghouses and FGDs for those Units, to use best efforts to achieve a 90% reduction of PSEG Fossil's mercury emissions from year 2000 levels at Hudson Unit 2, Mercer Unit 1, and Mercer Unit 2, within one year after installation of the carbon injection system, baghouse, and FGD at each Unit."

34. Consent Decree Paragraphs 147 through 150 are replaced with the following:  
“By December 31, 2008, PSEG Fossil shall also install and commence operation of Mercury CEMS at Mercer Units 1 and 2.”

#### **IX. PARTICULATE MATTER MONITORING**

35. A new Consent Decree Paragraph 154a is inserted into and made a part of Section VIII of the Consent Decree as follows: “Beginning no later than December 31, 2008, PSEG Fossil shall have installed and shall operate PM CEMS technology at Mercer Unit 1 and Mercer Unit 2 in accordance with 40 C.F.R. Part 60, App. B, Performance Specification 11, and App. F Procedure 2. Beginning no later than December 31, 2010, PSEG Fossil shall have installed and shall operate PM CEMS technology at Hudson Unit 2, in accordance with 40 C.F.R. Part 60, App. B, Performance Specification 11, and App. F Procedure 2. The installation and operation of PM CEMS in no way affects the applicability of Consent Decree Paragraphs 74 or 93.”

36. A new Consent Decree Paragraph 154b is inserted into and made a part of Section VIII of the Consent Decree as follows: “The PM CEMS required by Consent Decree Paragraph 154a shall include a continuous particle mass monitor measuring particulate matter concentration, directly or indirectly, on an hourly average basis and a diluent monitor used to convert the concentration to units of lb/mmBTU. PSEG Fossil shall maintain, in an electronic database, the hourly average emission values of all PM CEMS in lb/mmBTU. No later than 180 days prior to the deadline for commencing operation of the PM CEMS required by Paragraph 154a, PSEG Fossil shall submit to EPA and NJDEP for review and approval pursuant to Paragraphs 94–98 of the Consent Decree a proposed Quality Assurance/Quality Control (“QA/QC”) protocol that PSEG Fossil will follow in calibrating the PM CEMS. In its protocol,

PSEG Fossil shall use 40 C.F.R. Part 60, App. B, Performance Specification 11, and App. F Procedure 2. PSEG Fossil shall include in its QA/QC protocol a description of any periods in which it proposes that the PM CEMS may not be in operation in accordance with Performance Specification 11. Upon approval by EPA and NJDEP, PSEG Fossil shall implement the QA/QC protocol in accordance with the terms set forth therein. PSEG Fossil shall operate each PM CEMS at all times that the Unit it serves is in operation, except as provided for in the QA/QC protocol approved by EPA and NJDEP.”

**X. ENVIRONMENTAL MITIGATION PROJECTS FOR THE STATE OF NEW JERSEY**

37. A new Consent Decree Paragraph 154c is inserted into and made a part of Section VIII of the Consent Decree as follows: “Within 30 days of the date of entry of an order approving this Amendment, PSEG Fossil shall submit to NJDEP for review and approval, pursuant to Paragraphs 94 through 98 of the Consent Decree, proposed plans for environmental mitigation projects to reduce particulate matter from diesel engines within the New Jersey air shed region. Upon approval, PSEG Fossil shall implement these projects in compliance with the terms and schedule in the approved plans. In performing these particulate matter reduction projects, PSEG Fossil shall spend \$3.25 million (present value in 2006 dollars).”

**XI. CIVIL PENALTY**

38. A new Consent Decree Paragraph 160a is inserted as follows: “Within thirty calendar days of entry of an order approving this Amendment, PSEG Fossil shall pay to the United States a civil penalty in the amount of \$4.25 million. The civil penalty shall be paid by Electronic Funds Transfer (“EFT”) to the United States Department of Justice, in accordance with current EFT procedures, referencing the USAO File Number and DOJ Case Number 90-5-

2-1-1866/1 and the civil action case name and case number of this action. The costs of EFT shall be PSEG Fossil's responsibility. Payment shall be made in accordance with instructions provided by the Financial Litigation Unit of the U.S. Attorney's Office for the District of New Jersey. Any funds received after 4:00 p.m. (EST) shall be credited on the next business day. PSEG Fossil shall provide notice of payment, referencing the USAO File Number, DOJ Case Number 90-5-2-1-1866/1, and the civil action case name and case number, to the Department of Justice and to EPA, as provided in Consent Decree Paragraph 197. Failure to timely pay the civil penalty shall subject PSEG Fossil to interest accruing from the date payment is due until the date payment is made at the rate prescribed by 28 U.S.C. § 1961, and shall render PSEG Fossil liable for all charges, costs, fees, and penalties established by law for the benefit of a creditor or of the United States in securing payment."

39. A new Consent Decree Paragraph 160b is inserted as follows: "Within thirty calendar days of entry of an order approving this Amendment, PSEG Fossil shall pay to the State of New Jersey a civil penalty in the amount of \$1.75 million. Payment shall be made by check or wire transfer payable to 'Treasurer, State of New Jersey' and shall be submitted to:

Department of Environmental Protection  
Administrator, Air Compliance & Enforcement  
401 E. State Street  
P.O. Box 422  
Trenton, NJ 08625-0422"

## **XII. STIPULATED PENALTIES**

40. Consent Decree Paragraph 162(d) is replaced with the following: "For failure to operate an ESP, the Mercer 1 FGD, or the SCRs at Mercer Units 1 and 2 when the Unit associated with these devices is in operation, except as permitted by Paragraphs 47, 63, 80,

and 87: \$10,000 per day, per violation, for the first 30 days, and \$27,500 per day, per violation, thereafter.”

41. A new Consent Decree Paragraph 162(p) is inserted as follows: “For failure to operate the Hudson Unit 2 SNCR, Mercer 2 FGD, or the baghouses at Mercer Units 1 and 2 when the Unit associated with these devices is in operation, except as permitted by Paragraphs 47, 68, 87a, and 87b: \$10,000 per day, per violation, for the first 30 days, and \$32,500 per day, per violation, thereafter.

42. A new Consent Decree Paragraph 162(q) is inserted as follows: “For failure to implement the pollution reduction measures required by Paragraphs 13–15 of this Amendment: \$10,000 per day, per violation, for the first 30 days, and \$32,500 per day, per violation, thereafter.”

43. A new Consent Decree Paragraph 162(r) is inserted as follows: “For failure to timely pay the civil penalty as specified in Section XI (Civil Penalty) of this Amendment: \$10,000 per day for the first thirty days, and \$32,500 per day thereafter.”

44. A new Consent Decree Paragraph 162(s) is inserted as follows: “For all violations of a 90-Day Rolling Average Emission Rate: (1) Less than 5% in excess of limit—\$2,500 per day, per violation; (2) more than 5% but less than 10% in excess of limit—\$5,000 per day, per violation; (3) equal to or greater than 10% in excess of limit—\$10,000 per day, per violation;”

45. A new Consent Decree Paragraph 162(t) is inserted as follows: “For failure to permanently surrender allowances in accordance with Consent Decree Paragraph 102a: \$32,500 per day, per violation, plus \$1,000 per SO<sub>2</sub> or NO<sub>x</sub> Allowance, and the surrender of SO<sub>2</sub> and NO<sub>x</sub>



Allowances in an amount equal to four times the number of SO<sub>2</sub> and NO<sub>x</sub> Allowances used, sold, or transferred in violation of this Amendment.”

46. A new Consent Decree Paragraph 162(u) is inserted as follows: “For failure to comply with the emission caps in accordance with Consent Decree Paragraph 98a: \$100,000 per ton, per year for the first 100 tons over the limit, and \$120,000 per ton, per year for each additional ton over the limit.”

47. A new Consent Decree Paragraph 162(v) is inserted as follows: “For failure to permanently Shut Down Kearny Units 7 and 8 in accordance with Consent Decree Paragraph 98d: \$32,500 per day, per violation.”

48. A new Consent Decree Paragraph 162(w) is inserted as follows: “For failure to meet the FGD milestone, SCR milestone, or baghouse milestone dates in Paragraphs 4, 7, and 10 of this Amendment: \$5,000 per day, per violation for the first thirty days, and \$15,000 per day, per violation thereafter.”

49. A new Consent Decree Paragraph 162(x) is inserted as follows: “For failure to commence operation of the FGD, SCR, and baghouse at Hudson Unit 2 by December 31, 2010, unless PSEG Fossil has Shut Down this Unit on or before that date: \$32,500 per day, per violation, plus the surrender of SO<sub>2</sub> and NO<sub>x</sub> Allowances in an amount equal to three times the total number of SO<sub>2</sub>, NO<sub>x</sub>, and PM tons emitted after December 31, 2010, that would not have otherwise been emitted had PSEG Fossil installed the FGD, SCR, and baghouse in a timely manner.”

50. A new Consent Decree Paragraph 162(y) is inserted as follows: “For failure to Shut Down Hudson Unit 2 by December 31, 2008, if PSEG Fossil has elected to do so, except as otherwise provided in Paragraph 19 of this Amendment: \$32,500 per day, per violation, plus the

surrender of SO<sub>2</sub> and NO<sub>x</sub> Allowances in an amount equal to three times the total number of SO<sub>2</sub>, NO<sub>x</sub>, and PM tons emitted after December 31, 2008.”

### **XIII. FORCE MAJEURE**

51. Consent Decree Paragraph 176 is replaced with the following: “The parties agree that, depending upon the circumstances related to an event and PSEG Fossil’s response to such circumstances, the kinds of events listed below could also qualify as Force Majeure Events within the meaning of this Section: construction, labor, or equipment delay or failures; natural gas and gas transportation availability delay or failures; acts of War; acts of terrorism; and orders by government officials, acting under and authorized by applicable law, that direct PSEG Fossil to supply electricity in response to a legally-declared, system-wide (or state-wide) emergency, provided that the issuance of such an order after PSEG Fossil has elected to Shut Down Hudson Unit 2, Mercer Unit 1, or Mercer Unit 2 shall not qualify as a Force Majeure Event unless PSEG Fossil can establish that the emergency giving rise to the order was caused by circumstances beyond its control, or the control of any entity owned by PSEG Fossil, and that the emergency giving rise to the order could not have been prevented by the exercise of due diligence by PSEG Fossil.”

### **XIV. COMPLETE AGREEMENT**

52. Consent Decree Paragraph 200 is replaced with the following: “The Consent Decree, which includes this Amendment, constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressed contained in the Consent Decree.”

## **XV. GENERAL PROVISIONS**

53. ***Effective Date.*** The effective date of this Amendment shall be the date upon which this Court enters an order approving this Amendment.

54. ***Modification.*** Except as otherwise allowed by law or as provided in Section XIII (Force Majeure) and Section XIV (Dispute Resolution) of the Consent Decree, there shall be no modification of this Amendment without written approval by the United States, PSEG Fossil, and New Jersey, and approval of such modification by this Court.

55. ***Signatories.*** This Amendment may be signed in counterparts, and such counterpart signature pages shall be given full force and effect. The undersigned representative of PSEG Fossil certifies he is fully authorized to enter into the terms and conditions of this Amendment and to execute and legally bind PSEG Fossil.

56. ***Public Notice and Comment; Objection to Entry.*** The Parties to this Amendment agree and acknowledge that final approval by the United States and entry of this Amendment is subject to the procedures of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Amendment in the Federal Register, an opportunity for public comment, and the right of the United States to withdraw or withhold consent if comments disclose facts or considerations which indicate that the Amendment is inappropriate, improper, or inadequate. PSEG Fossil shall not oppose entry of this Amendment by this Court or challenge any provision of this Amendment unless the United States or New Jersey has notified PSEG Fossil in writing that the United States or New Jersey no longer supports entry of the Amendment.


57. ***Final Judgment.*** Upon approval and entry of this Amendment by the Court, this Amendment shall constitute a final judgment between the United States, the State of New Jersey, and PSEG Fossil.

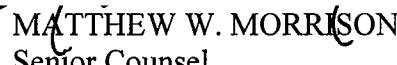
SO ORDERED, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2006.

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UNITED STATES DISTRICT COURT JUDGE

**FOR THE UNITED STATES OF AMERICA:**

  
SUE ELLEN WOOLDRIDGE  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

  
MATTHEW W. MORRISON  
Senior Counsel  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice

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~~GE~~ANTA Y. ~~NA~~KAYAMA

Assistant Administrator

Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency

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ALAN J. STEINBERG

Regional Administrator, Region 2

United States Environmental Protection Agency

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JOSEPH A. SIEGEL

Senior Attorney

Office of Regional Counsel, Region 2

United States Environmental Protection Agency

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ADAM M. KUSHNER

Director, Air Enforcement Division

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ANDREW C. HANSON

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Attorney Advisor

Air Enforcement Division

Office of Enforcement and Compliance Assurance

United States Environmental Protection Agency

FOR THE STATE OF NEW JERSEY:



LISA JACKSON  
Commissioner  
New Jersey Department of Environmental  
Protection

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LISA MORELLI  
Deputy Attorney General  
Division of Law  
Department of Law and Public Safety



**FOR PSEG FOSSIL LLC:**

\_\_\_\_\_  
PSEG FOSSIL LLC

A handwritten signature in black ink, consisting of a stylized, cursive 'P' followed by a horizontal stroke.